(6)

Supreme Court, U.S.
FILED
JUL 15 1999
OFFICE OF THE CLERK

No. 98-1464

SUPREME COURT OF THE UNITED STATES

JANET RENO, ATTORNEY GENERAL OF THE UNITED STATES,

Petitioner,

v.

CHARLIE CONDON, ATTORNEY GENERAL OF SOUTH CAROLINA,

Respondent

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF OF FEMINIST MAJORITY FOUNDATION, et. al., (Additional amici listed on inside cover) AMICI CURIAE IN SUPPORT OF PETITIONER UNITED STATES

Erwin Chemerinsky
Counsel of Record
University of Southern California Law School
699 Exposition Blvd.
Los Angeles, CA 90089-0071
(213) 740-2539

Sara N. Love
Feminist Majority Foundation
1600 Wilson Blvd.
Suite 801
Arlington, Virginia 22209
(703) 522-2214
Attorneys for Amici Curiae

3788

Amici Curiae in Support of the United States

Feminist Majority Foundation
American Civil Liberties Union
American College of Obstetricians and Gynecologists
Center for Reproductive Law & Policy
National Abortion Federation
National Abortion and Reproductive Rights Action League
National Center for Victims of Crime
National Coalition of Abortion Providers
National Coalition Against Domestic Violence
National Organization for Women Foundation, Inc.
National Women's Health Organization
NOW Legal Defense and Education Fund
Pennsylvania Coalition Against Domestic Violence
Physicians for Reproductive Choice and Health
Planned Parenthood Federation of America, Inc.
STOPDV, Inc.
The Women's Law Project

QUESTION PRESENTED

Amici curiae present this Question as appropriate for resolving this case and encompassed by the grant of certiorari.

Whether Congress, pursuant to its authority under the Commerce Clause and section five of the Fourteenth Amendment, may prohibit state governments from disclosing private identifying information so as to protect women from stalking and violence and to enforce women's ability to exercise their constitutional right to abortion.

TABLE OF CONTENTS

Table of Cited Authorities ii

Interests of Amici Curiae 1

Summary of Argument 12

ARGUMENT
THE DRIVER'S PRIVACY PROTECTION ACT
IS A CONSTITUTIONAL EXERCISE OF CONGRESS'
POWER TO PROTECT AND ENFORCE THE RIGHTS
OF WOMEN.....16

A. The Driver's Privacy Protection Act Protects
Women and Prevents Violation of Women's Rights 16

1. Privacy of information possessed by state
departments of motor vehicles is crucial in
protecting women from stalking and violence 16

2. Privacy of information possessed by state
departments of motor vehicles is crucial in
protecting women's constitutional right to
reproductive choice by protecting health care
professionals and patients from stalking
and violence.....20

B. Congress Has the Authority to Protect and Enforce
the Rights of Women By Prohibiting State Conduct ...26

Conclusion 30

TABLE OF AUTHORITIES

CASES

City of Boerne v. Flores, 521 U.S. 507 (1997) 15, 27

Florida Prepaid Postsecondary Education Expense Board v. College Savings Bank and United States, 119 S.Ct. ___ (1999), 1999 WL 412723 (June 23, 1999) 15, 27

Heart of Atlanta Motel v. United States, 379 U.S. 241 (1964) 29

Katzenbach v. McClung, 379 U.S. 294 (1964) 29

New York v. United States, 505 U.S. 144 (1992) 14, 15, 26, 27

Planned Parenthood v. Casey, 505 U.S. 833 (1992) 15, 27

Printz v. United States, 521 U.S. 98 (1997) 14, 15, 26, 27

Reproductive Services, Inc. v. Walker, 439 U.S. 1307 (1978) 15, 27

Roe v. Wade, 410 U.S. 113 (1973) 15, 27

South Carolina v. Baker, 485 U.S. 505 (1988) 28

State of Oklahoma v. United States, 161 F.3d 1266 (10th Cir. 1998) 28

Travis v. Reno, 163 F.3d 1000 (7th Cir. 1998) 28

Thornburgh v. American College of Obstetricians and Gynecologists, 476 U.S. 747 (1986) 15, 27

United States v. Lopez, 514 U.S. 549 (1995) 29

United States v. Virginia, 116 S.Ct. 2264 (1996) 15, 27

Whalen v. Roe, 429 U.S. 589 (1977) 15, 27

STATUTES AND REGULATIONS

Driver's Privacy Protection Act of 1994, Pub. L. No. 103-322, 108 Stat. 2099-2102, 18 U.S.C. §§2721-2725 .....passim

Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, 96 Stat. 324, 26 U.S.C. §310(b)(1) 28

Violence Against Women Act, 42 U.S.C. §14104.....20

Voting Rights Act of 1965, 42 U.S.C. §1973 et. seq. 26

MISCELLANEOUS

Aware Woman Center for Choice, Inc. v. Rainey, (M.D.Fla. No. 99-05) (Deposition of Meredith T. Raney, Jr.) 25

Congressional Research Service Report for Congress, Violence Against Women: An Overview (1994) 19

Court to Hear Privacy Cases, Washington Post (May 18, 1999) at A-1 29

Florida Pro-Lifers ID Replacement for Gunn, Life

Advocate, September 1993.....14, 22, 24

David A. Grimes, Clinicians Who Provide Abortions, 80 Obstetrics and Gynecology 719 (1992) 25

Stanley K. Henshaw, Abortion Incidence and Services in the United States 1995-1996, 30 Family Planning Perspectives 263 (1998) 26

Jennifer Jackman, Christine Onyango & Elizabeth Gavrilles, 1998 National Clinic Violence Survey Report (1999), http//www.feminist.org/research/ surveys/1998/finaldraft.htm 13, 21, 22, 25

Killer Clown Exposed, Life Advocate, October 1993...14, 23

"Nuremberg Files," http://www.netfreedom.net/nuremberg/ index.html. 14, 23

Planned Parenthood et al v. ACLA et al, No. 95-1671-JO (D. Ore. 1999).....24

Protecting Driver's Privacy, Hearings, Subcommittee on Civil and Constitutional Rights of House Judiciary Committee (1994) (testimony of David Beatty), 1994 WL 14168013 ..12, 17, 18

James Risen, Social Issues: Abortion Clinic Attacks Cast Glare on New Group of Extremists, L.A. Times (January 17, 1995) 25

Olga Rodriguez, Advocating the Use of California's Stalking Statute to Prosecute Radical Anti-Abortion Protestors, 7 Hastings Women's L.J. 151 (1997) 13, 21, 22

Kevin Sherlock, "Operation Rescue of California Presents Abortion Buster's Manual".....14, 23

Statement of Barbara Boxer, Driver's Privacy Protection Act (October 26, 1993) 17, 21

Statement of John Warner, Driver's Privacy Protection Act, Cong. Rec. S15764.....17

Patricia Tjaden & Nancy Thoennes, Stalking in America: Findings from the National Violence Against Women Survey, National Institute of Justice, Centers for Disease Control and Prevention (April 1998) 13, 18, 19

"U.S. Helped Fund License Photo Database," Washington Post (February 18, 1999), at A1 29

Violent Crime Control and Law Enforcement Act of 1994, H.R. Conf. Rep. No. 103-711, at 391 (1994) 19

Violent Crime Control and Law Enforcement Act of 1993 Congressional Record S156707 (November 16, 1993).....29

Joan Zorza, Recognizing and Protecting the Privacy and Constitutionality Needs of Battered Women, 29 Fam. L.Q. 273 (1995) 19, 20

98-1464

JANET RENO, ATTORNEY GENERAL OF THE UNITED STATES, *Petitioner*

v.

CHARLIE CONDON, ATTORNEY GENERAL OF SOUTH CAROLIANA, *Respondent.*

INTERESTS OF AMICI CURIAE[1]

Amici curiae are organizations that are dedicated to protecting the rights and health of women. Amici curiae present this brief out of their profound concern for how information gained from motor vehicle records can be used to stalk women and to intimidate health care providers who perform abortions. Specifically, the following organizations join this brief as amici curiae:

Feminist Majority Foundation ("Foundation") is a non-profit organization with offices in Arlington, Virginia and Los Angeles, California. The Foundation is dedicated to eliminating sex discrimination and violence against women, and to the promotion of equality, women's rights and safe access to abortion and birth control. The Foundation actively pursues legal protection for reproductive health service

[1]Letters of consent to the filing of this brief have been lodged with the Clerk of the Court pursuant to Rule 37.3. Pursuant to Rule 37.6, counsel for amici state that no counsel for a party authored this brief in whole or in part and that no person, other than amici, its members, or its counsel, made a monetary contribution to the preparation and submission of this brief.

providers, and provided legal counsel for Respondents in Madsen v. Women's Health Center, Inc., 512 U.S. 753 (1994), which upheld the use of clinic safety buffer zones.

The Foundation's National Clinic Access Project, the largest clinic access program in the nation, has mobilized and trained more than 45,000 volunteers in 47 cities in 26 states over the last 10 years. The Foundation's Project has spent significant time and resources protecting access to women's health clinics around the country, providing emergency financial, legal and security assistance. The Foundation also runs the National Center for Women & Policing, which seeks to increase the numbers of women in law enforcement and improve police response to violence against women. The National Center is a recognized leader nationwide in developing educational programs and conducting training for law enforcement on the most effective practices in responding to violence against women including stalking and domestic violence cases. The Foundation believes that the Driver's Privacy Protection Act is important to protect women from harassment, stalking and murder and to protect women's access to abortion and reproductive health services.

American Civil Liberties Union (ACLU) is a nationwide, nonprofit, nonpartisan organization with nearly 300,000 members dedicated to the principles of liberty and equality embodied in the Constitution and this nation's civil rights laws. It has appeared before this Court on numerous occasions, both as direct counsel and as amicus curiae. The ACLU joins this brief in support of the Driver's Privacy Protection Act because the legal issues in this case do not arise in a vacuum. To the contrary, they directly affect the personal safety and reproductive choices of women throughout the

country, as described in great detail below. Those concerns have long been central to the mission of the ACLU's Women's Rights Project and the ACLU's Reproductive Freedom Project. More generally, the ACLU has been deeply engaged in the battle to preserve the right to privacy in a digital age when governments at every level are increasingly willing and able to treat personal information as yet another commodity available for sale. In its view, the constitutional authority of Congress to act under these circumstances was clear, and the judgment of the Fourth Circuit below should accordingly be reversed.

American College of Obstetricians and Gynecologists (ACOG) is a private, non-profit, voluntary organization, whose more than 39,000 members represent over 95% of board-certified obstetricians and gynecologists in the United States. ACOG is a leading organization of health care professionals dedicated to providing health care for women.

ACOG's interest in this case is twofold. First, as an organization of physicians serving women, ACOG recognizes that domestic violence is a major threat to women's health, and supports legislation and other measures to reduce the incidence of violence against women. Secondly, ACOG is concerned by the increase in harassment and violence against physicians, other health care providers and clinics offering reproductive health services, including abortions. ACOG's members firmly believe that violence against health care professionals is never acceptable.

Center for Reproductive Law & Policy (CRLP) is a public interest law firm dedicated to protecting women's access to reproductive health care in the United States and around the world. CRLP is particularly concerned with preserving women's ability to obtain abortions confidentially and without being subject to harassment by anti-choice activists. CRLP

believes that disclosure of women's names and addresses to people who obtain license plate identification is a significant means by which such activists identify and target women for harassment.

National Abortion Federation (NAF) is the professional association of abortion providers in the United States and Canada. NAF members include over 350 nonprofit and private clinics, women's health centers, Planned Parenthood facilities, and private physicians in 46 states, the District of Columbia, and Puerto Rico. NAF's programs include accredited medical education and training, clinic defense, public and consumer education, and advocacy in furtherance of its mission to keep abortion, safe, legal, and accessible.

As an organization representing abortion providers who have endured kidnapping, stalking, death threats, attempted murder, murder, and numerous other incidents of violence, NAF is committed to ensuring the physical safety of providers and their patients. Such violence places not only health care providers and patients in danger, but also jeopardizes all women's access to abortion services. NAF believes that the Driver's Privacy Protection Act's provisions restricting public access to personal information is a crucial element in protecting providers and patients from future violence.

National Abortion and Reproductive Rights Action League (NARAL) and the NARAL Foundation, with NARAL's 29 affiliated state organizations and over 200,000 members and supporters, develop and sustain a constituency that uses the political process to guarantee every woman the right to make personal decisions regarding the full range of reproductive choices, including preventing unintended

pregnancy, bearing healthy children, and choosing legal abortion. The NARAL Foundation supports and protects a woman's right to make reproductive choices as a fundamental freedom. This mission is supported through education, training programs, and public policy initiatives. NARAL participated actively in promoting the Freedom of Access to Clinic Entrances Act (FACE) and promotes clinic violence prevention in the states. NARAL has participated previously as amicus curiae in clinic violence cases.

National Center for Victims of Crime ("National Center," formerly National Victim Center) is a nonprofit organization headquartered in Arlington, Virginia. The National Center is the nation's most effective resource and advocacy center for victims of crime. The mission of the National Center is to forge a national commitment to help victims of crime rebuild their lives. The National Center is dedicated to serving individuals, families, and communities harmed by crime. Among other things, the National Center advocates laws and public policies that create resources and secure rights and protections for crime victims. The National Center has a particular interest in this brief due to its extensive work and dedication to representing the interests of stalking victims.

National Coalition Against Domestic Violence (NCADV), founded in 1978, is a grassroots organization representing a national network of over 2,000 local programs and state coalitions that serve battered women and their children. NCADV serves as a national information and referral center for the general public, the media, battered women and their children, agencies and organizations. NCADV provides information and technical assistance, and promotes the development of innovative model programs

which address the special needs of battered women and battered women's programs.

NCADV is committed to ensuring the safety of domestic violence victims and to advocating for laws that protect women's safety. The Driver's Privacy Protection Act of 1994 significantly helps domestic violence victims by preventing the tracking of victims through the departments of motor vehicles. Many women are first tracked down in this manner and later physically harmed or killed. NCADV joins this brief of amici curiae to assist the Supreme Court in the consideration of the critical issue of the safety for battered women and children as well as justice for women seeking abortions.

National Organization for Women Foundation, Inc., is a 501(c)(3) organization devoted to furthering women's rights through education and litigation. NOW Foundation is affiliated with the National Organization for Women, the largest feminist organization in the United States, with over 500,000 contributing members in more than 600 chapters in all 50 states and the District of Columbia. Since its inception in 1986, a major goal of NOW Foundation has been to ensure full equality for women, including reproductive freedom and the elimination of violence against abortion providers and the women who use their services. Towards that goal, NOW Foundation has supported related litigation and legislation, including passage of the Freedom of Access to Clinic Entrances Act and winning the landmark Racketeer Influenced and Corrupt Organizations Act case, N.O.W. v. Scheidler.

National Women's Health Organization (NWHO) was founded in 1976 to provide abortion and other women's health services to women in underserved and rural areas. NWHO serves as a management company for eight women's

health clinics around the country. The NWHO clinics have been plaintiffs in over 30 cases, including N.O.W. v. Scheidler, No. 86-7888, a nationwide class action against lead anti-abortion extremists under the racketeering laws. In 1994, this Court unanimously held that the Racketeer Influenced and Corrupt Organizations Act did not require an economic motive, thus allowing this case to go to trial. In 1998, the jury returned a unanimous verdict in favor of the plaintiffs.

NWHO clinic staff, doctors, and patients have been stalked, harassed, threatened, and even murdered by anti-choice extremists. Dr. David Gunn, who was murdered by Michael Griffin in 1993, worked at NWHO's Columbus, Georgia facility. Anti-abortion extremists have taken down staff, doctor, volunteer and patient license plate numbers and harassed these people at home, among other places. NWHO supports the Driver's Privacy Protection Act as a vital part of ensuring that women and staff are able to provide medical care and exercise constitutional rights without fear of violence.

NOW Legal Defense and Education Fund (NOW LDEF) is a leading national non-profit civil rights organization that performs a broad range of legal and educational services in support of women's efforts to eliminate sex-based discrimination and to secure equal rights for women. NOW LDEF was founded as an independent organization in 1970 by leaders of the National Organization for Women.

A primary focus of NOW LDEF is work in support of the rights of women who have been the victims of domestic and gender-motivated violence. Most notably, NOW LDEF chaired the national task force that was instrumental in passing the historic Violence Against Women Act ("VAWA"), and is litigating the initial cases brought under the VAWA's Civil Rights Remedy, including Brzonkala v. Virginia Polytechnic,

169 F.3d 820 (4th Cir. 1999), *petition for cert. filed* (June 30, 1999)(No. ___). In addition, NOW LDEF works extensively to secure reproductive rights for all women. To this end, NOW LDEF has litigated numerous cases involving clinic violence and efforts to protect safe access to reproductive health services, and intervened on behalf of doctors, women and clinics to defend the Freedom of Access to Clinic Entrance Act (FACE), 18 U.S.C. §248, against constitutional challenges.

Pennsylvania Coalition Against Domestic Violence, Inc. (PCADV) is a not-for-profit organization incorporated in the Commonwealth of Pennsylvania for the purpose of providing services and advocacy on behalf of victims of domestic violence and their minor children. PCADV is a membership organization of 64 shelters, hotlines, counseling programs, safe home networks, legal advocacy projects, and transitional housing projects for battered women and their dependent children in the Commonwealth. For over twenty years, PCADV has provided training and technical assistance to domestic violence programs, attorneys, the courts, and law enforcement agencies on issues of domestic violence.

PCADV is deeply concerned about the safety of victims of domestic violence and knows that battering is extremely dangerous and can be lethal. Stalking occurs most frequently in the context of domestic violence where abusers attempt to locate women and their children in an effort to force them into returning to a relationship or to punish them for having left. When domestic violence survivors are able to flee they must be able to have their location kept confidential. Public access to personal information held by state departments of motor vehicles gravely jeopardizes safety attempts by battered women and their children. PCADV joins

this brief to assist this Court in its consideration of the critical issues of safety for battered women and children.

Physicians for Reproductive Choice and Health (PRCH) firmly supports the amicus brief supporting the constitutionality of the Driver's Privacy Protection Act (DPPA). PRCH is a national physician-led not-for-profit organization founded in 1992. We represent more than 1,800 physicians of various disciplines and more than 1,000 non-physician supporters. Our members are family practice physicians, obstetricians/ gynecologists, pediatricians, internists, adolescent medicine specialists, psychiatrists and others. The mission of PRCH is to enable concerned physicians to take a more active and visible role in support of voluntary universal reproductive health. PRCH is committed to ensuring that all people have the knowledge, equal access to quality services and freedom of choice to make their own reproductive health care decisions.

The ability to access personal information through license plate numbers directly impacts the safety of physicians, staff, volunteers and patients in facilities that provide abortions, as well as the families of these individuals. The DPPA might have helped to prevent the tragic 1994 murder of our colleague Dr. Bayard Britton whose identity was obtained from his license plate by anti-abortion extremists. One PRCH Board member, the late Dr. Elizabeth Karlin, spoke about her negative experiences with throngs of anti-choice protesters demonstrating outside of her home. Recently, the threat of anti-choice violence at private homes has become a harsh reality with the 1998 brutal murder of our member Dr. Barnett Slepian, a physician who was shot and killed in his kitchen in front of his wife and children.

The ability of fanatical extremists to obtain personal information such as the home addresses of physicians and patients also has a serious effect on the provision of women's reproductive health care in general. Physicians and staff under threat of personal attacks may choose not to provide and the current provider shortage (approximately 86% of all counties in the United States do not have an abortion provider) will only increase, leaving more women without access to essential health services. Additionally, the lack of privacy will inordinately influence women who fear for their personal safety not to seek needed health services. Therefore the Driver's Privacy Protection Act is necessary to protect the lives and rights of physicians and patients.

Planned Parenthood Federation of America, Inc. ("PPFA") a New York not for profit corporation, is the world's oldest and largest voluntary reproductive health care organization. PPFA provides leadership to 132 autonomous affiliates that manage 900 health centers in 47 states and the District of Columbia. PPFA is dedicated to the principle that every individual has a fundamental right to choose when or whether to have children, regardless of the individual's income, martial status, race, ethnicity, sexual orientation, age, national origin, or residence. Therefore, PPFA affiliates provide education and medical services to nearly five million women and men a year, including contraceptive services and counseling, cancer screening and evaluation, emergency contraception, HIV testing, infertility treatment, medical and surgical abortion, pregnancy testing and counseling, sexuality education, testing of sexually transmitted disease and infections, prenatal care and sterilization.

PPFA affiliates provide confidential medical services in an effort to provide a safe environment for patients to make

important decisions about their reproductive health care needs. On a daily basis, affiliate patients and employees are exposed to picketing and harassment from protestors, instilling fear in employees and affecting the ability of patients to make these important decisions. As the violence against and the harassment of patients and employees increases, PPFA recognizes the necessity of ensuring patient and employee confidentiality as part of its mission to provide reproductive health care services and advocate public policies, which guarantee access to these services.

STOPDV, Inc. is a national organization dedicated to protecting battered women and children from domestic violence. It has dealt with over 70,000 cases of stalking and domestic violence. STOPDV, Inc. joins this brief of amici curiae out of its belief that it is critical to the safety of battered women and stalking victims that their addresses are kept from those who would stalk and kill them and their family members. The Driver's Privacy Protection Act can be quite simply the difference between life and death for these people.

The Women's Law Project is a Philadelphia-based, not-for-profit women's legal advocacy organization founded in 1974 for the purpose of advancing women's legal, social, and economic status. The Law Project provides free telephone counseling to 8,000 callers a year on problems including domestic violence, child support and custody, divorce, employment discrimination, and welfare. The Law Project is counsel to sixty-six organizations serving domestic violence survivors who filed in amicus brief in Saenz v. Roe, 119 S.Ct.1518 (1999), and participates on the Pennsylvania Department of Public Welfare's Domestic Violence/TANF Task Force.

The Law Project also has litigated extensively on behalf of women's medical providers and patients. Its litigation docket has included such landmark reproductive rights cases as Planned Parenthood v. Casey, Elizabeth Blackwell Health Center for Women v. Knoll, Roe v. Operation Rescue, and Thornburgh v. American College of Obstetricians and Gynecologists. A number of its clients have experienced illegal, violent clinic blockades, arson, bomb threats, assaults, and death threats by anti-choice protestors, and several doctors providing abortion services in Pennsylvania have been repeatedly stalked and harassed at their homes. The Drivers' Privacy Protection Act is an important protection for these medical providers and for women subject to harassment, stalking and prior assault.

SUMMARY OF ARGUMENT

The Driver's Privacy Protection Act of 1994, Pub. L. No. 103-322, 108 Stat. 2099-2102, 18 U.S.C. §§2721-2725 (the "Act" or "DPPA"), prohibits state departments of motor vehicles, and their employees, from disclosing personal information about individuals without their consent. The Act is crucial to protecting women from stalking and violence. Indeed, the legislative history of the Act clearly documents a serious nationwide problem of women being stalked, assaulted, and at times murdered by individuals who obtained the women's home addresses from state departments of motor vehicles. See, e.g., Protecting Driver's Privacy, Hearings, Sub-committee on Civil and Constitutional Rights of House Judiciary Committee (1994) (testimony of David Beatty), 1994 WL 14168013; see also Cong. Rec. S15761-65

(November 16, 1993); Cong. Rec. H2522-24 (April 20, 1994).

The easiest, and sometimes the only way, in which stalkers can find their victims is through information from state departments of motor vehicles. The National Institute of Justice Report specifically recommends address confidentiality programs as a way of combatting stalking. Patricia Tjaden & Nancy Thoennes, Stalking in America: Findings from the National Violence Against Women Survey, National Institute of Justice, Centers for Disease Control and Prevention (April 1998) at 12. Experts on domestic violence also strongly express the need for address confidentiality. Women fleeing a violent, abusive relationship must keep their new locations secret; confidentiality of information possessed by departments of motor vehicles is thus crucial.

Moreover, the DPPA is important to protecting the right of women to have access to reproductive health care. Extremist anti-abortion groups are engaged in a national campaign of violence against health care professionals who work at facilities where abortions are performed and of harassment of women seeking abortions. Olga Rodriguez, Advocating the Use of California's Stalking Statute to Prosecute Radical Anti-Abortion Protestors, 7 Hastings Women's L.J. 151, 153-154 (1997). Doctors, nurses, and administrators have been stalked, assaulted, and some murdered. Such violence and harassment has a direct effect on women's right to abortion because it causes many professionals to resign in the face of threats and violence. See Jennifer Jackman, Christine Onyango & Elizabeth Gavrilles, 1998 National Clinic Violence Survey Report (1999),http//www.feminist.org/research/surveys/1998

/finaldraft.html.

The key way in which violent anti-abortion groups learn the home addresses of these health care professionals and their patients is through departments of motor vehicles. In fact, the publications and testimony of these extremist anti-abortion individuals and groups specifically describe how doctors can be stalked by copying their license numbers and then learning their home addresses via state departments of motor vehicles. See Florida Pro-Lifers ID Replacement for Gunn, Life Advocate, September 1993, at 19; Killer Clown Exposed, Life Advocate, October 1993, at 16.

Extremist anti-abortion groups have prepared "Wanted Posters," for health care professionals and volunteers, and threatening web sites for them as well as others including judges and legislators. See "Nuremberg Files," http://www.netfreedom.net/nuremberg/index.html. Personal information, such as home addresses and license plate numbers, are included. Id. This information is frequently obtained from state departments of motor vehicles. See Kevin Sherlock, "Operation Rescue of California, Presents Abortion Buster's Manual." Such a "Wanted Poster" was prepared against Dr. John Britton who was subsequently murdered by an anti-abortion extremist.

Congress unquestionably has the authority under both section five of the Fourteenth Amendment and its Commerce Clause power to prevent violations of rights by prohibiting state government action. Although the Tenth Amendment limits Congress' ability to compel legislative or regulatory activity by state governments, Printz v. United States, 521 U.S. 98 (1997), New York v. United States, 505 U.S. 144 (1992), this Court never has questioned Congress' authority

to prohibit state and local government actions that violate the rights of individuals.

This Court repeatedly has ruled that Congress, pursuant to section five of the Fourteenth Amendment, may adopt laws to prevent the violations of rights. Florida Prepaid Postsecondary Education Expense Board v. College Savings Bank and United States, 119 S.Ct. ___ (1999), 1999 WL 412723 (June 23, 1999); City of Boerne v. Flores, 521 U.S. 507, 518-520 (1997). The Driver's Privacy Protection Act protects rights protected by the Fourteenth Amendment, including the right to privacy, Whalen v. Roe, 429 U.S. 589 (1977); the right to abortion, Planned Parenthood v. Casey, 505 U.S. 833 (1992), Roe v. Wade, 410 U.S. 113 (1973); the right to informational privacy for women seeking abortions, Thornburgh v. American College of Obstetricians and Gynecologists, 476 U.S. 747 (1986), Reproductive Services, Inc. v. Walker, 439 U.S. 1307 (Brennan, Circuit Justice 1978); and the equal protection rights of women, United States v. Virginia, 116 S.Ct. 2264 (1996).

Moreover, the DPPA is a constitutional exercise of Congress' authority under its Commerce Clause power. This Court never has suggested that Congress, under its commerce clause authority, is limited in its ability to prohibit state government actions that endanger rights. In New York v. United States, 505 U.S. 144 (1992), and Printz v. United States, 521 U.S. 98 (1997), the Court held that Congress could not compel state governments to implement federal mandates. In both cases, this Court was concerned with Congress forcing states, at substantial cost, to regulate private behavior. Neither case involved Congress prohibiting states, at no regulatory cost or administrative burden whatsoever, from taking actions that endanger rights.

The Driver's Privacy Protection Act is a crucial federal law protecting women from violence and safeguarding women's constitutional right to abortion. The Act is in accord with countless federal laws, which have been upheld by this Court, that prohibit state conduct to prevent the violations of rights. Congress does not violate the Tenth Amendment when it prohibits state governments from acting in a manner that endangers the fundamental constitutional rights of women.

ARGUMENT

THE DRIVER'S PRIVACY PROTECTION ACT IS A CONSTITUTIONAL EXERCISE OF CONGRESS' POWER TO PROTECT AND ENFORCE THE RIGHTS OF WOMEN

A. The Driver's Privacy Protection Act Protects Women and Prevents Violation of Women's Rights

1. Privacy of information possessed by state departments of motor vehicles is crucial in protecting women from stalking and violence

The Driver's Privacy Protection Act of 1994, Pub. L. No. 103-322, 108 Stat. 2099-2102, 18 U.S.C. §§2721-2725, prohibits state departments of motor vehicles, and their employees, from disclosing personal information about individuals without their consent. The law was inspired by acts of violence against women and reproductive health care professionals who had been stalked and murdered by

individuals who learned their addresses through the use of information gained from state departments of motor vehicles.

Indeed, the legislative history of the Act documents the need to prevent violations of women's rights and particularly to prevent stalking and violence against women. Senator Barbara Boxer, a sponsor of the bill, spoke of how those "who move to escape an abusive relationship shouldn't have to choose between registering a car and maintaining their safety." Statement of Barbara Boxer, Driver's Privacy Protection Act (October 26, 1993), at 1. Senator Boxer mentioned several specific examples of women who were assaulted and murdered by assailants who learned the women's addresses through state departments of motor vehicles. Likewise, Senator John Warner, a co-sponsor of the bill spoke of how the "legislation is to protect a wide range of individuals" from the release of private information from state departments of motor vehicles. Cong.Rec. S15764 (Statement of Senator John Warner).

For example, throughout the legislative history of the Act, there is mention of the tragic stalking and murder of actress Rebecca Schaeffer. See, e.g., Protecting Driver's Privacy, Hearings, Subcommittee on Civil and Constitutional Rights of House Judiciary Committee (1994) (testimony of David Beatty), 1994 WL 14168013; see also Cong. Rec. S15761-65 (November 16, 1993); Cong. Rec. H2522-24 (April 20, 1994). Robert Bardo, a man who had been confined to mental institutions on several occasions, obtained Schaeffer's address through the California Department of Motor Vehicles. Having her address, he went to her apartment where he shot and killed her.

David Beatty, the Director of Public Affairs for the National Victims Center, testified at length before the House Judiciary Committee about the need for the law to protect women from violence. Mr. Beatty explained that "accessing government records is the most common way in which abusers find their victims once they've moved in an attempt to escape." Beatty Testimony, supra at 3.

Mr. Beatty described many instances of women who had been stalked and murdered by individuals who found them through the use of information from departments of motor vehicles. Id. at 4. He concluded that limiting access to information at state departments of motor vehicles "will not only reduce the likelihood of further harassment and violence but will actually save the lives of numerous innocent victims." Id. at 5.

There is a serious national problem with women being stalked and subjected to violence. The easiest way, and sometimes the only way, for a stalker to locate his victim is through information from state departments of motor vehicles. The report and recommendations of the National Institute of Justice and the Centers for Disease Control and Prevention, is authoritative and instructive. Patricia Tjaden & Nancy Thoennes, Stalking in America: Findings from the National Violence Against Women Survey, National Institute of Justice, Centers for Disease Control and Prevention (April 1998). The Report found that "[s]talking is more prevalent than previously thought: 8 percent of women and 2 percent of men have been stalked at some time in their life; an estimated 1,006,970 women and 370,990 men are stalked annually." Id. at 2.

The Report also found that most stalking victims are women. Specifically, it found that "[s]eventy-eight percent

of the stalking victims identified by the survey were women . . . and 87 percent of the stalkers identified by victims were male." Id. at 5.

The Report recommended "address confidentiality programs" as a way of combatting stalking. Id. at 12. The Report noted that stalking victims are urged to relocate and to secure a confidential mailing address. The Report expressly concluded: "Stalking intervention strategies should include address confidentiality programs. Survey data indicate that about a fifth of all stalking victims move to a new location to escape their stalker." Id. at 14. Restricting the release of information by state departments of motor vehicles obviously is crucial to ensuring address confidentiality.

Confidentiality of personal information, such as addresses, is particularly important for victims of domestic violence. In 1994, Congress found that domestic violence is the leading cause of injuries to women between the ages of 15 and 44. Violent Crime Control and Law Enforcement Act of 1994, H.R. Conf. Rep. No. 103-711, at 391 (1994). Nearly 30 percent of all murders of women are committed by husbands or boyfriends. Congressional Research Service Report for Congress, Violence Against Women: An Overview 5 (1994). One study found that "[a]t least 90 percent of battered women who are killed by their past or present lovers were known to have been stalked by them before being murdered." Joan Zorza, Recognizing and Protecting the Privacy and Constitutionality Needs of Battered Women, 29 Fam. L.Q. 273, 274 (1995).

A woman who is fleeing an abusive, violent relationship desperately needs to keep her new address secret. One commentator explained:

> "An abused woman must be able to keep her whereabouts confidential because many abusive and controlling men spend enormous amounts of time and effort spying on, seeking out, following, and harassing their victims. Such stalking behaviors can be especially lethal to the victims and children. Once her location is known to her abuser, he is very likely to go on battering her. And he may even kill her, and her children, as well. Given that most abusive men continue to search for and abuse their prior partners, for a battered woman to be safe, she has to able to keep any new address confidential."

Zorza, at 281. Congress has recognized this in other statutes as well, such as the provision of the Violence Against Women Act which provides for confidentiality of post office information. See 42 U.S.C. §14014 (requiring the United States Postal Service to protect the confidentiality of domestic violence shelters' and abused persons' addresses). See also 42 U.S.C. §14104 (providing for the preparation of a report on the confidentiality of victims' addresses).

Address confidentiality is truly a matter of life and death for many women. The DPPA is thus essential to safeguarding women and protecting them from stalking and acts of violence. The Act eliminates the ability of stalkers to gain their victim's addresses by simply paying a small fee to state departments of motor vehicles.

2. Privacy of information possessed by state department of motor vehicles is crucial in protecting women's constitutional right to reproductive choice by protecting health care professionals and patients from stalking and violence

The Act also is important in protecting women's rights in another way: it safeguards the privacy of doctors and health care personnel who perform abortions and the women who see these professionals for reproductive health care. As Senator Boxer stated upon introducing the Act, "doctors and nurses shouldn't have to worry about anti-abortion activists taking down their license plate numbers and then harassing and intimidating them and their families." Statement of Senator Barbara Boxer, Driver's Privacy Protection Act (October 26, 1993).

Extremist anti-abortion groups are engaged in a campaign of violence against health care facilities and professionals that perform abortions. One researcher found: "Anti-abortion extremists have increasingly resorted to aggressive and violent actions in an attempt to achieve their objectives. . . . After the first fatal attack on an abortion clinic in 1993, there have been seven murders [of doctors and clinic healthcare workers]." Olga Rodriguez, Advocating the Use of California's Stalking Statute to Prosecute Radical Anti-Abortion Protestors, 7 Hastings Women's L.J. 151, 153-154 (1997). The 1998 National Clinic Violence Survey found that 22.2% of clinics experienced one or more forms of severe violence including blockades, invasions, bomb threats and bombings, arson threats and arsons, chemical attacks, death threats, and stalking. Jennifer Jackman, Christine Onyango & Elizabeth

Gavrilles, 1998 National Clinic Violence Survey Report (1999), http//www.feminist.org/research/surveys/1998/finaldraft.html.

Extremist, violent anti-abortion protestors stalk, threaten, assault, and sometimes murder health care professionals who perform abortions. Rodriguez at 155. The 1998 Clinic Violence Survey found that 5.1% of clinics had experienced stalking and that 8.5% of clinics experienced home picketing. Jackman, et al, 1998 National Clinic Violence Survey Report.

Extremist anti-abortion groups have engaged in a concerted effort to track down doctors, staff, and patients through their license plate numbers. Indeed, anti-abortion groups have adopted an aggressive campaign of publicly identifying doctors and other health care personnel who work at facilities that perform abortions and publicizing their home addresses. Randall Terry, founder of the extremist group, Operation Rescue, initiated a "No Place to Hide Campaign," in which the faces of doctors were put on "Wanted Posters" that were placed around their residential neighborhoods. Rodriguez at 153. Other extremists also have circulated similar posters. The key to the targeting and stalking of these health care professionals is the ability of extremist anti-abortion protestors to learn home addresses of those who work at facilities that perform abortions. The easiest way, and sometimes the only way, to gain this information is through state departments of motor vehicles.

Indeed, the publications of these violent anti-abortion groups specifically describe how doctors can be stalked by copying their license numbers and then learning their home addresses via state departments of motor vehicles. See Florida Pro-Lifers ID Replacement for Gunn, Life Advocate,

September 1993, at 19; Killer Clown Exposed, Life Advocate, October 1993, at 16. Operation Rescue of California, in its "Abortion Buster's Manual," specifically stated that in many states it is possible "to trace abortionists' license plate numbers through your state's vehicle registration agency." Sherlock, "Operation Rescue of California Presents Abortion Buster's Manual." The Manual provided a detailed description of how to gain personal information about doctors and health care personnel from the departments of motor vehicles.

Some extremist anti-abortion groups have organized what they termed, "The Nuremberg Files," which they described as a project of "collecting dossiers on abortionists in anticipation that one day we may be able to hold them on trial for crimes against humanity." http://www.netfreedom.net/nuremberg/index.html. The Nuremberg Files website encourages the gathering of information against "persons who perform abortions (doctors, nurses, etc.), persons who own or direct abortion clinics, persons who provide protection to abortion clinics (security guards, escorts, law enforcement officers, etc.), and judges and politicians who pass or uphold laws authorizing child-killing or oppressing pro-life activists." Id.

The website claims that it wanted to gather "current and past personal data including date and place of birth, home and business addresses and phone numbers, Social Security numbers, [and] automobile license plate numbers." Id. All of this is information that was available from state departments of motor vehicles prior to the enactment of the Driver's Privacy Protection Act.

The information gained from license plate numbers is used to assault and even murder health care professionals

providing reproductive health services. The most poignant example of this is Dr. John Britton. Several anti-abortion extremists, including Paul Hill, went to great effort to determine the identity of the doctor who replaced Dr. David Gunn, who had been murdered the year before. One extremist finally obtained the doctor's license plate number (the doctor had purposefully tried to keep it hidden, insofar as was legal) and called it in to a cohort who "ran a check on the tag" and within ten minutes had secured Dr. Britton's identity. "Florida Pro-Lifers ID Replacement for Gunn," Life Advocate, September 1993. Extremists then prepared "wanted posters" against Dr. Britton titled, "Wanted for Crimes Against Humanity,"[2] and included the doctor's picture, home and work addresses, the description of his motor vehicle and its license plate number, as well as other information that was available from department of motor vehicle records. Subsequently, Paul Hill murdered Dr. Britton.

Extremist anti-abortion groups copy license plate numbers from cars leaving clinics and other facilities that provide reproductive health services. State departments of motor vehicles are then used to identify the individuals and to provide personal data, include home addresses, of health care professionals and patients. In a deposition, anti-abortion extremist Meredith T. Raney, Jr., described copying license plate numbers at facilities in Florida and then getting

[2]A similar "wanted poster" against another doctor and the "Nuremberg Files" website, supra, were found by a jury to be true threats not protected by the First Amendment in Planned Parenthood et al v. ACLA et al, No. 95-1671-JO (D. Ore. 1999).

addresses from the Florida Department of Transportation. Aware Woman Center for Choice, Inc. v. Raney, (M.D.Fla. No. 99-05) (Deposition of Meredith T. Raney, Jr.) at 32-33.

Patients as well as health care professionals are targeted. One group announced what it called, "Operation Goliath," and its formal press release stated: "We are starting to have our volunteers take down the license plate number or anyone that they are not able to give literature to. We then trace their license number through legal means, and obtain their name and address." "For Immediate Release: Pro-Life Group Announces New Tactics."

The violence directed at health care professionals directly threatens the ability of women to exercise their right to abortion. Indeed, Attorney General Janet Reno has spoken of a nationwide conspiracy to impede access to abortions. James Risen, Social Issues: Abortion Clinic Attacks Cast Glare on New Group of Extremists, L.A. Times (January 17, 1995), at A5. One expert noted that "[h]arassment and intimidation may dissuade skilled clinicians from entering this field, or convince them to quit." David A. Grimes, Clinicians Who Provide Abortions, 80 Obstetrics and Gynecology 719, 721 (1992). The stalking and targeting of health care professionals has resulted in many resigning. In 1998, 4.8% of clinics lost staff as a result of anti-abortion violence. Jackman et al, 1998 National Clinic Violence Survey Report (1999), http//www.feminist.org/research/surveys/1998/finaldraft.html. Of the clinics reporting violence-related staff resignations, 11.8% lost a physician, 52.9% lost nurses, 35.3% lost administrators, 11.8% lost counselors, and 5.9% had lab technicians resign. Id.

This campaign of violence against health care providers directly impedes the ability of women to exercise their constitutional right to make reproductive choices. Today, 86% of American counties have no abortion provider, a 14% drop from 1992. Stanley K. Henshaw, Abortion Incidence and Services in the United States 1995-1996, 30 Family Planning Perspectives 263 (1998).

Women exercising their constitutional right to obtain an abortion require the assistance of doctors and health care professionals. Stalking and violence against those working at health care facilities that perform abortions directly threaten this constitutional right. The DPPA is crucial in protecting the secrecy of personal information concerning these health care professionals and limiting the ability of extremist anti-abortion groups to engage in stalking and acts of violence.

B. Congress Has the Authority to Protect and Enforce the Rights of Women By Prohibiting State Conduct

Although the Tenth Amendment limits Congress' ability to compel legislative or regulatory activity by state governments, Printz v. United States, 521 U.S. 98 (1997), New York v. United States, 505 U.S. 144 (1992), there is no doubt that Congress can prohibit state and local government actions that violate the rights of individuals. Federal civil rights statutes, such as 18 U.S.C. §241 and 42 U.S.C. §1983, prevent violations of rights by those acting under color of state law. The Voting Rights Act of 1965, 42 U.S.C. §1973 et. seq., directly regulates state governments. This Court, of course, never has expressed doubt as to the constitutionality of such

laws, even though they are directed at prohibiting state and local government conduct.

Moreover, Congress is not limited solely to providing remedies for violations of rights. This Court repeatedly has ruled that Congress, pursuant to section five of the Fourteenth Amendment may adopt laws to prevent the violations of rights. Florida Prepaid Postsecondary Education Expense Board v. College Savings Bank and United States, 119 S.Ct. ___ (1999), 1999 WL 412723 (June 23, 1999); City of Boerne v. Flores, 521 U.S. 507, 518-520 (1997).

The Driver's Privacy Protection Act enforces rights protected by the Fourteenth Amendment, including the right to privacy, Whalen v. Roe, 429 U.S. 589 (1977); the right to abortion, Planned Parenthood v. Casey, 505 U.S. 833 (1992), Roe v. Wade, 410 U.S. 113 (1973); the right to informational privacy for women seeking abortions, Thornburgh v. American College of Obstetricians and Gynecologists, 476 U.S. 747, 766-67 (1986), Reproductive Services, Inc. v. Walker, 439 U.S. 1307, 1308 (Brennan, Circuit Justice 1978); and the equal protection rights of women, United States v. Virginia, 116 S.Ct. 2264 (1996). The legislative history of the Act documents a pattern of violations of each of these constitutionally protected rights, justifying the authority of Congress to enact the law pursuant to section five of the Fourteenth Amendment.

Also, this Court never has suggested that Congress, under its commerce clause authority, is limited in its ability to prohibit state government actions that endanger rights. In New York v. United States, 505 U.S. 144 (1992), and Printz v. United States, 521 U.S. 98 (1997), the Court held that Congress could not compel state governments to implement federal mandates. However, neither case restricted Congress'

authority to prevent state and local actions that could result in violations of rights. In both cases, this Court was concerned with Congress forcing states, at substantial cost, to regulate private behavior. Neither case involved Congress prohibiting states, at no regulatory cost or administrative burden whatsoever, from taking actions that endanger rights.

Indeed, this Court has expressly upheld federal laws that prohibit state government actions, even though it has invalidated laws compelling such actions. In South Carolina v. Baker, 485 U.S. 505 (1988), this Court rejected a Tenth Amendment challenge to the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, 96 Stat. 324, 26 U.S.C. §310(b)(1), which required states to issue bonds in registered form. The law prohibited the issuance of bearer bonds by state governments, and this Court upheld its constitutionality, declaring: "Any federal regulation demands compliance. That a State wishing to engage in certain activity must take administrative and sometimes legislative action to comply with federal standards regulating that activity is a commonplace that presents no constitutional defect." 485 U.S. at 514-15.

The DPPA prevents the interstate commercial flow of information obtained from departments of motor vehicles and thus is very much within the scope of Congress' Commerce Clause authority. See Travis v. Reno, 163 F.3d 1000 (7th Cir. 1998); State of Oklahoma v. United States, 161 F.3d 1266 (10th Cir. 1998) (upholding the constitutionality of the Act). Senator Boxer, the sponsor of the bill, expressly linked the need to prevent stalking and violence to Congress' authority to regulate interstate commerce. Senator Boxer explained that "with mail, cars, and harassment involved, this issue clearly has an impact on interstate commerce. As such -- under

Article I, section 8 -- this area is well within Congress' authority to regulate. We all understand that interstate commerce is severely threatened when mail is used, when people are scared to drive in their cars, when their civil rights are violated and then they live in fear of being harassed and stalked." Violent Crime Control and Law Enforcement Act of 1993 Congressional Record S156707 (November 16, 1993).

The DPPA directly regulates commercial activity by state governments in prohibiting the selling of information by departments of motor vehicles. It is estimated that New York's motor vehicle department earned $17 million in one year by selling driver records. Court to Hear Privacy Cases, Washington Post (May 18, 1999) at A-1; see also "U.S. Helped Fund License Photo Database," Washington Post (February 18, 1999), at A1 (describing sales of motor vehicle photos by state governments to a company seeking to compile a national data base). Thus, the DPPA directly regulates a commercial activity, as state departments of motor vehicles are profiting at the expense of women's safety and women's rights.

Also, the law regulates activities that have a substantial effect on interstate commerce in that information from departments of motor vehicles is used for stalking of women and harassment of providers of reproductive health services. The Act is thus a constitutional exercise of Congress' authority under the commerce clause. See United States v. Lopez, 514 U.S. 549 (1995).

This Court has made it clear that Congress may use its Commerce Clause power to protect civil rights. See, e.g., Katzenbach v. McClung, 379 U.S. 294 (1964); Heart of Atlanta Motel v. United States, 379 U.S. 241 (1964)

(upholding the constitutionality of the 1964 Civil Rights Act as a permissible exercise of Congress' commerce clause authority).

The Fourth Circuit was incorrect in its premise that the DPPA regulates state agencies and ignores private actors. The Act regulates all who are involved in the licensing, registration, and record dissemination process. For example, §2721(a) addresses DMV employees, as well as independent "contractors." Section 2721(c) regulates resale or redisclosure, which do not involve state employees at all, only private entities. Section 2722 prohibits "additional unlawful acts" committed by "any person," not just state employees. Federal fines and civil causes of action may accrue against any responsible person, private or public, not only State actors. §§2723, 2724.

Simply put, Congress has the authority, under both section five of the Fourteenth Amendment and the Commerce Clause, to enact laws to prevent the violations of rights. The Driver's Privacy Protection Act is crucial to safeguarding the rights of women to be free from stalking and violence and to having access to abortion and other medical services. The Tenth Amendment is not violated by this federal law that imposes virtually no burden on state governments and prohibits states from acting in a manner that endangers the rights of women.

Conclusion

For these reasons, amici curiae urge this Court to reverse the Fourth Circuit and uphold the constitutionality of the Driver's Privacy Protection Act.

Respectfully submitted,

Erwin Chemerinsky
University of Southern
California Law School
699 Exposition Blvd.
Los Angeles, CA 90089-0071
(213) 740-2539

Sara N. Love
Feminist Majority Foundation
1600 Wilson Blvd.
Suite 801
Arlington, Virginia 22209
(703) 522-2214

Attorneys for Amici Curiae